



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**Via Facsimile & First Class Mail**  
602-229-5690

**JAN 12 2012**

James L. Burke, Esq.  
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RE: MUR 6465  
Natalie Wisneski

Dear Mr. Burke:

By letter dated April 8, 2011, the Federal Election Commission ("Commission") notified your client, Natalie Wisneski, of a complaint alleging that your client violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and provided your client with a copy of the complaint.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on December 13, 2011, found that there is reason to believe that Ms. Wisneski knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General

Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Thomas Andersen, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Caroline C. Hunter  
Chair

Enclosure  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Natalie Wisneski

MUR 6465

4 **I. INTRODUCTION**

5 This matter was generated by a complaint filed with the Federal Election Commission by  
6 Melanie Sloan, alleging violations of the Federal Election Campaign Act of 1971, as amended  
7 ("the Act"), by Natalie Wisneski.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Factual Background**

10 The Fiesta Bowl is registered as a non-profit corporation in Arizona and is organized  
11 under section 501(c)(3) of the Internal Revenue Code. The Fiesta Bowl states that through its  
12 creation and sponsorship of the Festival of College Football – which includes numerous Arizona  
13 events such as the annual Tostitos Fiesta Bowl and the Insight Bowl college football games – it  
14 "promote[s] volunteerism, athletic achievement and higher education."  
15 <http://www.fiestabowl.org/index.php/fiestabowl/about>.

16 In mid-December 2009, following an article in THE ARIZONA REPUBLIC reporting that  
17 Fiesta Bowl employees may have been reimbursed for political contributions, the Fiesta Bowl  
18 retained outside counsel to conduct an investigation (the "First Investigation"). See Craig Harris,  
19 *Fiesta Bowl Employees Say Bowl Repaid Political Contributions*, THE ARIZONA REPUBLIC,  
20 December 18, 2009. After interviewing several employees, counsel reported to the Board of  
21 Directors that there was no credible evidence to support the reimbursement allegations. In  
22 October 2010, after receiving information from a Fiesta Bowl employee contradicting the First  
23 Investigation's findings, the Chairman of the Board of Directors of the Fiesta Bowl formed a

1 Special Committee to re-investigate the reimbursement allegations and to examine the First  
2 Investigation. The Special Committee retained another law firm and empowered it with full  
3 authority to investigate all potential violations of internal policies, state laws, and federal laws  
4 (the "Second Investigation"). The Second Investigation included interviews with 52 individuals  
5 and the review of over 10,000 pages of documents, and culminated in a 276-page Final Report of  
6 Counsel to the Special Committee of the Board of Directors of the Fiesta Bowl ("Final Report").  
7 On March 21, 2011, the Fiesta Bowl released a public version of the Final Report, minus all  
8 attachments and source materials (*e.g.*, interview statements). *See*  
9 [http://www.fiestabowl.org/documents/reports/Fiesta\\_Bowl\\_Final\\_Public.pdf](http://www.fiestabowl.org/documents/reports/Fiesta_Bowl_Final_Public.pdf).

10 The Final Report concluded that since 2000, the Fiesta Bowl has used corporate funds to  
11 reimburse 21 individuals for at least \$46,539 in local, state, and federal campaign contributions.  
12 The Final Report also concluded that the Fiesta Bowl may have hosted fundraising events for  
13 federal and nonfederal candidates on its premises without charge.

14 Relying on information in the Final Report, the complaint alleges that the Fiesta Bowl  
15 and 13 individuals, including former Chief Operating Officer Wisneski, (1) violated 2 U.S.C.  
16 § 441f and 11 C.F.R. § 110.4(b)(1)(i) by "reimbursing employees for contributions made to  
17 federal candidates and committees," and (2) violated 2 U.S.C. § 441b(a) and 11 C.F.R. §  
18 114.2(a) and (f) by "reimbursing employees and others with corporate funds for contributions  
19 made to federal candidates and committees and by using corporate resources and facilities to  
20 raise funds for federal candidates and committees." Complaint at 6-7. The complaint provides a  
21 list of the federal contributions it asserts were reimbursed by the Fiesta Bowl after January 1,  
22 2006. *Id.* at 5-6.

1 Based on a review of the Final Report, the response to the complaint, the Commission's  
2 electronic contributor search index, and other information, there appear to be four additional  
3 post-January 2006 contributions and three pre-2006 contributions to federal committees that,  
4 while not listed in the complaint, appear to have been reimbursed by the Fiesta Bowl. In sum,  
5 there appear to be 29 federal contributions at issue, totaling \$30,400.

6 **B. How the Fiesta Bowl Reimbursed Contributions**

7 The Special Committee's Final Report contains a detailed account of how the  
8 contributions at issue were solicited and reimbursed, based primarily on interviews with Fiesta  
9 Bowl employees who served as conduits for the contributions. Anthony Aguilar, Director of  
10 Community and Corporate Relations, stated that contributions were typically requested by  
11 Junker, Wisneski, and former Fiesta Bowl consultant Gary Husk. Final Report at 35. Kelly  
12 Keogh, who served as Executive Manager for Junker during the period at issue, stated that an  
13 email request saying "we need to get so many checks" sometimes would be sent from Husk's  
14 office to Wisneski, Junker, and/or Aguilar, and then a copy of the email would be sent "to the  
15 rest of us." *Id.* Some employees were reluctant to contribute. For example, Peggy Eyanson,  
16 Director of Business Operations, stated that she first refused to make a \$1,000 contribution at the  
17 request of Wisneski's assistant Monica Simental, but made the contribution only after being  
18 promised reimbursement. *Id.* at 36.

19 The primary means of reimbursing contributors appears to have been through so-called  
20 "bonus" checks handed out by Wisneski at Junker's direction. *Id.* at 37.

21 He [Junker] would just say "I need contributions. We need contributions  
22 to Friends of [U.S. Senator] Jon Kyl," or, "the check needs to be made out  
23 to Friends of," whoever, like [Arizona State Senator] Russell Pearce.  
24 Later, he started using the term bonus and would say "Did you bonus staff  
25 out?" . . . "John would say, 'Did you bonus staff out and did you put some  
26 other staff members in there - put [Director of Sales] Erika [Puniphrey] in

1 there," – people that didn't contribute – to cover it. Sometimes he would  
2 be pretty rude and adamant and tell me, "Bonus the staff," because I  
3 wasn't doing it and people must have been telling him that they weren't  
4 getting their reimbursements. It would be like a constant pounding on me  
5 to bonus the staff and I knew he was only talking about the ones that were  
6 getting the campaign reimbursements.

7  
8 *Id.* at 39.

9 According to Wisneski, Junker asked her to come up with "pretextual reasons" for the  
10 bonuses, but that she had a difficult time doing so. *Id.* Wisneski stated, for example, that Junker  
11 instructed her to simultaneously give bonuses to individuals who had not contributed in order to  
12 disguise the purpose of the reimbursements.

13 Eyanson stated that the checks were written from a manual checkbook that was typically  
14 used for non-payroll items such as paying bills from independent contractors. *Id.* at 38. She and  
15 others stated that the reimbursement amounts were usually "grossed up" to account for state and  
16 federal taxes. *Id.* at 40. The checks were usually signed by Wisneski after Eyanson filled out the  
17 date, amount, and payee information. *Id.* Eyanson, Keogh, and former officer Shawn Schoeffler  
18 stated that some of the contributions for which they were reimbursed were made in the names of  
19 their spouses. *Id.* at 42. Although the Final Report contains few details as to how the payments  
20 were documented as bonuses, it includes copies of checks and spreadsheets on which the word  
21 "Bonus" was written by hand in the "checkbook memo" space.<sup>1</sup> *Id.* at 41, 57, 61, 62, 144.

22 In addition to individual bonus checks, another means of reimbursement included giving  
23 a single employee a large bonus check from which that employee could then reimburse other  
24 employees for their contributions. Wisneski recalled that, in or around 2003, former CFO Stan  
25 Laybourne said to her: "How this is going to work is I'm going to be paid a bonus, like \$10,000  
26 or \$15,000, and then I'm going to pay all of you back." *Id.* at 43. The Final Report includes a

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<sup>1</sup> In some cases, there appear to have been no checkbook notations for the reimbursement checks. *Id.* at 42.

1 copy of a \$15,000 check in the manual check register made out to Laybourne dated January 12,  
2 2005. *Id.* at 45. Eyanson stated that she believed the check may have been for contribution  
3 reimbursements based on handwritten figures on the check stub, which Eyanson thought could  
4 be reimbursement amounts. *Id.* at 44. Wisneski stated that after Laybourne was given the  
5 \$15,000 bonus check, she and Junker contacted Husk to see if Wisneski could also receive a  
6 "bonus" that she could use to reimburse other employees for their campaign contributions. *Id.* at  
7 49. According to Wisneski, Husk replied, "Yeah, it's done all the time." *Id.* Wisneski said she  
8 then received a \$5,000 check for the purpose of reimbursing other contributors. Husk, for his  
9 part, denied that he ever told anyone that the Fiesta Bowl could make reimbursements for  
10 campaign contributions, and he specifically denied that he spoke to Junker and Wisneski about  
11 whether Wisneski could receive a bonus that should be used to fund the reimbursements of other  
12 employees. *Id.* at 49-50.

13 Eyanson, however, stated that Wisneski told her in late 2006 that Anthony Aguilar was to  
14 receive a \$15,000 bonus in order to reimburse contributors in cash. *Id.* at 46. Aguilar confirmed  
15 that he received a \$15,000 check in October 2006 for "reimbursement purposes." *Id.* at 47. His  
16 bank records show that he withdrew \$6,484 a few days after depositing the check, which he  
17 recalled using to reimburse contributors, but he could not recall whether he gave out cash or  
18 wrote personal checks. *Id.* Aguilar said it was possible he gave some of the money to former  
19 Fiesta Bowl officers Fields or Schoeffler for further distribution. *Id.* at 48.

20 Some individuals interviewed during the Second Investigation stated that not all of the  
21 reimbursements were made in the form of "bonus" checks. Schoeffler stated that he was  
22 sometimes reimbursed through bonus checks, and at other times through an expense check. *Id.*  
23 at 50. For example, on June 30, 2009, Schoeffler contributed \$1,000 to Senator John McCain's

1 campaign and then received a \$4,000 check on August 25, 2009. Schoeffler stated that \$3,000 of  
2 this amount was to be used as a down payment on a car, and the remaining \$1,000 was a  
3 reimbursement for his contribution to the McCain campaign. *Id.*

4 Many of the federal reimbursements acknowledged by the Fiesta Bowl were for  
5 contributions made by Junker and his wife. According to Wisneski, in early 2007, before Junker  
6 was to receive a \$20,000 bonus, he showed her a list of campaign contributions that he and his  
7 wife had made and for which they needed to be reimbursed. Final Report at 58. Wisneski said  
8 she was upset about Junker's request, but that she asked Eyanson for the amount Junker would  
9 receive if the \$20,000 was grossed up to cover taxes. Wisneski recalled that the increased  
10 amount, \$11,948.88, approximated the sum of the contributions on Junker's list, so she instructed  
11 Eyanson to cut a bonus check to Junker in the amount of \$31,948.88 (\$20,000 + \$11,948.88).  
12 The Final Report notes that the total of all federal and nonfederal contributions Junker and his  
13 wife gave from 2000 through the date of the check (February 26, 2007) was \$11,302. *Id.*

14 Wisneski reported that Junker also complained about not being reimbursed for \$2,100  
15 that he and his wife each contributed to Senator McCain's campaign on March 8, 2007.  
16 Wisneski said she felt uncomfortable but told Eyanson to write a check; Junker then received a  
17 \$4,200 bonus check that Eyanson identified as a likely reimbursement. *Id.* at 59-60. The check  
18 register contains the letters "MC" in Eyanson's handwriting, which Eyanson believes stood for  
19 "McCain." *Id.* at 60.



**C. Legal Analysis**

A corporation is prohibited from making contributions in connection with any election of any candidate for federal office. *See* 2 U.S.C. § 441b(a). In addition, section 441b(a) prohibits any officer or director of any corporation from consenting to any contribution by the corporation. The Act also provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f.

In addition, “no person shall . . . knowingly help or assist any person in making a contribution in the name of another.” 11 C.F.R. § 110.4(b)(1)(iii). “[K]nowingly helping or assisting” applies to “those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another . . . .” Explanation and Justification for 11 C.F.R. § 110.4 at 54 Fed. Reg. 34,105 (Aug. 17, 1989). A contribution made in the name of another results when the source of a contribution solicits a conduit to transmit funds to a campaign in the conduit’s name, subject to the source’s promise to advance or reimburse the funds to the conduit. *See U.S. v. O’Donnell*, 608 F.3d 546, 549 (9<sup>th</sup> Cir. 2010).

The Act prescribes additional penalties for violations that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990). Evidence does not have to show that the defendant had specific knowledge of the regulations; an inference of knowing and willful conduct may be drawn from the defendant’s scheme to disguise the source of funds used in illegal activities. *Id.* at 213-15.

1           The Fiesta Bowl acknowledges that it reimbursed 27 federal contributions made by  
2   13 individuals, including Wisneski, totaling \$28,400, and as mentioned above, it appears that the  
3   total amount of federal contributions the Fiesta Bowl reimbursed was \$30,400. The fact that the  
4   Fiesta Bowl, acting through its officers and other employees, disguised the reimbursements  
5   principally as bonuses over the course of several years strongly suggests, moreover, that it knew  
6   the reimbursements were unlawful and attempted to conceal them.<sup>2</sup>

7           The Fiesta Bowl's flawed First Investigation, during which witnesses appear to have been  
8   carefully chosen and coached so as not to reveal the reimbursements, also suggests that its  
9   conduct was knowing and willful. During the First Investigation, outside counsel selected by the  
10   Fiesta Bowl relied on former Fiesta Bowl consultant Husk to set up the interviews. Final Report  
11   at 82. During the screening for the interviews, four employees stated that they informed Husk  
12   they were aware of contribution reimbursements, yet they were not interviewed in the First  
13   Investigation. *Id.* at 83.

14          Eyanson said she told Husk that she had been reimbursed and that she was "not going to  
15   lie under oath." *Id.* at 89. She said that Husk replied, "We are going to steer the investigation  
16   another way and we are not going to let them talk to you." *Id.* Wisneski recalled being coached  
17   by Husk with a list of interview questions: "We went through them. And I remember . . . I  
18   gave an answer, and he said 'why don't you answer it this way.'" *Id.* at 84. Wisneski recalled  
19   that Junker also participated in discussions about who should be interviewed during the First  
20   Investigation, suggesting the names of individuals who had not been reimbursed. *Id.* at 85.  
21   Kelly Keogh also indicated that Husk coached her prior to her interview. *Id.* at 86-87.

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<sup>2</sup> In MUR 5818 (Fieger), the Commission found reason to believe that the respondents knowingly and willfully violated section 441f by reimbursing the contributions of employees in the form of bonuses. See First General Counsel's Report dated August 10, 2006 at 7, and Commission Certification dated September 19, 2006.

1 Although Husk denied these assertions, *id.* at 87-90, given the consistency of the contrary  
2 accounts of several witnesses, it appears that Husk and Junker may have intentionally  
3 manipulated the First Investigation to ensure that the Fiesta Bowl's reimbursement practices  
4 would not be revealed and would instead be covered up.

5 In addition, in late 2009 and early 2010, after the Secretary of State for Arizona requested  
6 information gathered in the First Investigation, it appears that Fiesta Bowl employees falsified  
7 documents so as to prevent State officials from uncovering the scheme. The Final Report states,  
8 for example, that the Fiesta Bowl provided the Secretary of State with an incomplete spreadsheet  
9 of contributions, bonuses, and expenses reimbursements. *Id.* at 132. Wisneski stated that Husk  
10 and Junker were both "relieved" that the spreadsheet did not include Junker's 2007 "bonus" of  
11 \$4,200 that she and Eyanson alleged was a reimbursement for the Junkers' two \$2,100  
12 contributions. *Id.* at 142.

13 Ms. Wisneski, who filed a joint response with her husband Richard, states that she  
14 cooperated fully with the Special Committee's counsel and was interviewed on six different  
15 occasions. The response states that Wisneski was "entirely honest and forthright in the  
16 interviews and with the information she provided," and her cooperation "proved invaluable" to  
17 the Second Investigation. Wisneski Response at 2. The response asserts that, given that three  
18 separate Government agencies are already investigating and considering criminally prosecuting  
19 this matter, it would be "redundant" and "not productive" for the Commission to take action. *Id.*  
20 at 1.

21 Wisneski has been recently indicted in federal court in Arizona on charges that relate, in  
22 part, to the alleged contribution reimbursements at issue. *See* Indictment, *U.S. v. Wisneski*, No.  
23 2:11-cr-02216-JAT (D. Ariz. filed Nov. 15, 2011). The criminal indictment – supported by

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1 information about Wisneski's activities consistent with the information in the Final Report –  
2 states, *inter alia*, that she “knowingly and willfully caused and caused to be made contributions  
3 in the names of others” totaling more than \$10,000 in 2007, \$2,000 in 2008, and \$2,000 in 2009.  
4 *Id.* at 10-12.

5 Although it appears that the Second Investigation relied more heavily on the statements  
6 of Wisneski than on the statements of any other witness, and that she may have engaged in the  
7 unlawful activities under pressure from John Junker or Gary Husk, *id.* at 39, 142-43, she also  
8 appears to have played a significant role in the soliciting, collecting, and reimbursing of  
9 campaign contributions – including, for example, signing checks that were disguised as bonuses  
10 and being reimbursed for at least two federal contributions.<sup>3</sup> Final Report at 37-40. Therefore,  
11 there is reason to believe that Natalie Wisneski knowingly and willfully violated 2 U.S.C.  
12 §§ 441b(a) and 441f by consenting to the use of corporate funds to make contributions in the  
13 names of others, by assisting in making contributions in the names of others, and by allowing her  
14 name to be used to effect such contributions.

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<sup>3</sup> The Final Report did not indicate that a contribution from Wisneski to the McCain campaign on June 30, 2009 was reimbursed; however, information in her indictment suggests that the Fiesta Bowl reimbursed this contribution as “Part of [Wisneski’s] Bonus.” Indictment at 12.